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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,058	11/07/2001	Michael E. Bell	11-908	4839

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/986,058

Applicant(s)

BELL, MICHAEL E.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 12 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 10 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed September 25, 2003, has been entered. Claims 1, 3, 5-7, 10, and 15 have been amended and claims 2, 4, 8, 9, 11, 12, 16, 17, and 19 have been cancelled as requested. New claim 20 has been added. Thus, the pending claims are 1, 3, 5-7, 10, 13, 14, 15, 18, and 20, with claims 13 and 14 being withdrawn as non-elected.

2. Said amendment is sufficient to withdraw the 112, 2nd rejections set forth in section 6-9 of the last Office Action. Additionally, said amendment is sufficient to withdraw the 102 rejection of claims 1, 5, 8, 10, and 11 as being anticipated by JP 60-206868 issued to Moryama et al. as set forth in section 12 of the last Office Action. Specifically, Moryama does not teach the new limitations of claim 1 which were previously recited in claims 2 and 4.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 20 is indefinite because it is unclear how the "second filler of 0-70% calcium carbonate" can be the same as the "second filler comprises a predetermined percentage of the composite material." Since claim 1, from which 20 depends, limits the '*first material*' from the

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waste carpeting containing a *first filler including calcium carbonate* and a thermoplastic resin' and the "composite material" to being the addition of the *first material* and a new second material, presumably the latex of claim 20, it is unclear what exactly the latex backcoat composition comprises. Does applicant intend to encompass a latex composition of water, latex, new calcium carbonate as one filler, and the first material of waste carpeting as a second filler?

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 3, and 5 stand rejected under 35 USC(b) as being anticipated by WO 99/40250 issued to Chen et al., as set forth in section 13 of the last Office Action.

The amendments to claim 1 incorporate limitations of claims 2, 4, 8, and 18, which also addressed in the rejection set forth in section 13. Thus, claims 1, 3, and 5 are similarly rejected.

Claim Rejections - 35 USC § 103

8. Claims 1 and 5 are rejected under 35 USC 103(a) as being unpatentable over the cited Moryama reference in view of the cited Chen reference.

As noted above, claim 1 has been amended to include the limitations of claims 2, 4, 8, and 12. Claim 8 was previously rejected under 102 as being anticipated by Moryama, while claims 2, 4, and 12 were rejected under 103 as being obvious over Moryama in view of Chen. As such, new claim 1 is rejected for reasons analogous to those set forth in section 15 of the last Office Action.

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9. Claims 3, 6, and 7 stand rejected under 35 USC 103(a) as being unpatentable over the cited Moryama reference in view of the cited Chen reference, as set forth in sections 15 and 17 of the last Office Action.

10. Claim 7 stands rejected under 35 USC 103(a) as being unpatentable over the cited Chen reference, as set forth in section 16 of the last Office Action.

Response to Arguments

11. Applicant's arguments filed with the amendment of September 25, 2003, have been fully considered but they are not persuasive.

12. Applicant traverses the above rejections by arguing that Moryama does not teach waste carpet containing calcium carbonate filler nor the claimed particle size. The examiner agrees and that is why the rejection of claim 1 has been changed from a 102 rejection to a 103 rejection over Moryama in view of Chen, as set forth in section 15 of the last Office Action.

13. Additionally, applicant argues Moryama is not directed to a latex carpet, as currently set forth in claim 20. However, this argument is not commensurate in scope with respect to the Moryama rejection of claims other than claim 20.

14. With respect to the 102 rejection of the claims by Chen, applicant once again argues Chen does not teach the latex set forth in claim 20. However, as noted above this argument is not commensurate in scope with claims other than claim 20, which do not recite said latex. Applicant also traverses the Chen rejection since the reference does not apply the backing in molten form, but rather a powder form. Once again, this argument is not commensurate in scope with claims other than claims 15 and 18.

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15. With respect to the rejection of claims over Moryama in view of Chen, applicant merely reiterates the arguments made for Moryama and Chen individually. Additionally, applicant contends the examiner's motivation to employ the claimed particle size as taught by Chen. Specifically, applicant asserts that such a particle size would not produce a more uniform resin blend. In response, it is argued that a blend of particles prepared having a larger particle size (e.g., 1 mm) versus a smaller particle size (e.g., 100 microns) would inherently be less uniform blend since the smaller size enables a better distribution of the components of the waste carpet.

16. With respect to applicants argument that the use of calcium carbonate would increase the carpet weight, the examiner concedes this error in motivational statement of the last Office Action. It is believed that the statement was meant to state said use would result in a decrease of the amount or weight of resin employed, rather than the overall weight of the carpet. Similarly, the examiner concedes the error in the statement of viscosity. Clearly, the statement was meant to read an increase in viscosity would decrease the amount of penetration since the material would not flow as easily, while a decrease in viscosity would increase the penetration into the carpet backing.

17. Therefore, applicant's arguments are found unpersuasive and the above rejections are maintained.

New Claim Rejections - 35 USC § 103

18. Claims 15 and 18 are rejected under 35 USC 103(a) as being unpatentable over the cited Moryama reference in view of the Chen patent and in further view of US 4,939,036 issued to Reith.

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As previously discussed Moryama teaches forming an extruded sheet of waste carpet scrap. However, as taught by Reith, it is well known in the carpet art that equivalent methods of backcoating a carpet include forming a extruded sheet and then adhering it to the carpet back, as taught by Moryama, and apply molten material directly onto the carpet back, as is presently claimed. (See Reith, col. 2, line 56-col. 3, line 14.) Thus, it would have been obvious to one skilled in the art to apply molten material directly onto the carpet backing, since Reith teaches said method is a known equivalent method of backcoating carpets. Therefore, claims 15 and 18 are rejected as being obvious over the cited prior art.

Allowable Subject Matter

19. Claims 10 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. While the prior art teaches employing waste carpet to form a backcoat in a new carpet structure, said prior art does not teach or fairly suggest the use of waste carpet particles as a filler material for a latex backing in a new carpet structure.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

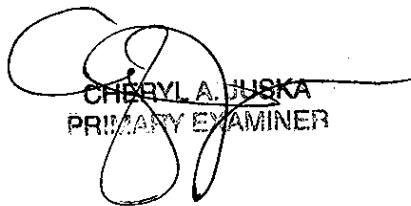
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.


CHERYL A. JUSKA
PRIMARY EXAMINER